

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

COURTNEY JONES,

Defendant.

02:03-CR-00350-LRH (LRL)

ORDER

Presently before the court is the Government's Motion to Dismiss (Docket No. 948). Courtney Jones ("Jones") has filed an opposition (Docket No. 963). No reply was filed.

Jones filed a motion pursuant to 28 U.S.C. § 2255 on August 31, 2005 (Docket No. 883). The Government is seeking to dismiss this motion due to the fact that Jones filed an appeal with the Ninth Circuit Court of Appeals. Jones's appeal is seeking relief from this court's order denying his request for an out-of-time appeal. Jones argues that his 2255 motion should not be dismissed because he has essentially abandoned his appeal and because any possible disposition on appeal would not have any effect on this action.

A district court should not entertain a section 2255 motion while there is an appeal pending because the disposition of the appeal could render the habeas corpus writ unnecessary. *Feldman v. Henman*, 815 F.2d 1318, 1320 (9th Cir. 1987). Since the filing of the Government's motion, the Ninth Circuit has dismissed Jones's appeal (Docket No. 1032). Therefore, the Government's

1 motion will be denied.

2 IT IS THEREFORE ORDERED that the Government's Motion to Dismiss (Docket No.
3 948) is hereby DENIED. The Government shall have thirty (30) days from the entry of this order
4 in which to respond to Jones's motion filed pursuant to 28 U.S.C. § 2255 (Docket No. 883).

5 IT IS SO ORDERED.

6 DATED this 6th day of March, 2006.



9 LARRY R. HICKS
10 UNITED STATES DISTRICT JUDGE
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